



Clarksburg Town Center – Violations Hearing

October 25, 2005

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Introduction

- Clarksburg Town Center Advisory Committee
 - Committee formed in July, 2004
 - Represents the residents of Clarksburg in seeking the faithful adherence to Board-approved plans for Clarksburg Town Center, in order to fulfill the vision and intent of the Master Plan and Project Plan.
 - CTCAC expects the Board, through appropriate findings, sanctions, remedial and compliance orders in this case, to contribute to healthy change to the current development climate in Montgomery County.

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Clarksburg Town Center Planning

- Approved Documentation

- Master Plan
- Project Plan
- Preliminary Plan
- Site Plan Phase I

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Clarksburg Town Center Planning

- Optional Method - § 59-C-10.3.1

- Planned retail center
- Higher density residential
- Developer provides public facilities and amenities over and above APF for project - § 59-C-10.3.9

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Clarksburg Town Center Planning

- Specific development standards were set
 - Clearly defining constraints
 - Ensuring compliance with Master Plan and Project Plan vision
 - Ensuring scale and compatibility with historic district
 - NO ambiguity

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CTC Planning – Development Standards

- The development standards for CTC were approved by the Board in the Project Plan, and reinforced in the Preliminary Plan:
 - Both the Project Plan and Preliminary Plan Opinions confirm that the Project Plan is the **"underlying development authority."**
 - Through Condition #14, the Board establishes each of the Development Standards as **"requirements"**
 - "Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. **Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable.**" (Preliminary Plan Opinion, March 26, 1996)
- These clear development standards were then incorporated into Site Plan Phase I

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Clarksburg Town Center Planning

- Site Plan Phase I – Condition #38
 - Based on scope of Site Plan Phase I, Board envisioned staff level changes - minor in nature - Condition #38 is reflective of that
 - Staff adopted a managed process (DRC and documentation) to accommodate Condition #38
 - Process never intended to allow for changes that would alter Site Plan or Project Plan requirements

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Clarksburg Town Center Planning

- Condition #38
 - Condition #38 cannot be interpreted to provide more authority than can lawfully be delegated to the Staff by the Board
- Delegation is limited by the definition of "Minor Amendment" as contained within the Zoning Code:
 - A minor amendment is an amendment or revision to a plan or any findings, conclusions, or conditions associated with the plan that does not entail matters that are fundamental determinations assigned to the Planning Board. A minor amendment is an amendment that **does not alter the** intent, objectives, or **requirements** expressed or imposed by the Planning Board in its review of the plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.

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Clarksburg Town Center Planning

- Why can't the Commission simply decide what is a minor amendment and not?
- When there is something major happening the Board must look at the interrelatedness of what is being changed versus what is not being changed
- There may be many effects and all need to be considered and processed and the public is entitled to voice its opinion on the proposed change and its effects

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What happened with CTC development?

- Inherent conflicts
 - Development constraints
 - Time consuming aspect of major amendment process
 - Market conditions/drivers
 - Profit motive

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What happened with CTC development?

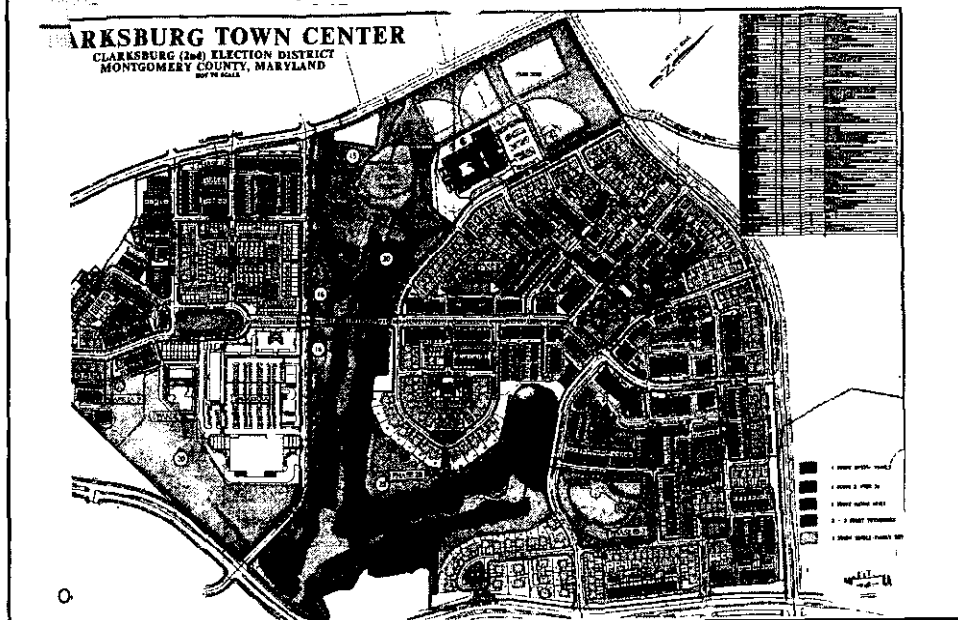
- Developer solution
 - Abandon approved standards and plans in favor of their own plan (Developer Map)
 - An established history of non-enforcement of site plans gave developers comfort that any problem that emerged could be patched over after-the-fact with paperwork

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What happened with CTC development?



What is the impact?

- Interrelated web of issues:
 - Fundamental design changes
 - Major changes to blocks
 - Removal of essential Plan features
 - Resultant development standards violations, and other related problems
- Creating “confusion” of records where none should exist

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How do they do it?

- General methodology
 - Pitch one thing to the Board and to the public, to avoid resistance;
 - Reinterpret development standards and change whatever they desire to change after approval is granted;
 - Proceed to develop according to their own wishes (without fear of detection...or true enforcement if detected);
 - Mislead staff through inclusion of alterations within unrelated documentation;

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How do they do it?

- Incorporate alterations after-the-fact into previously approved or yet-to-be-approved documentation;
- Misrepresent to the Board regarding prior approvals (Example: October 6th hearing and positioning of MPDU changes via February 10, 2005 Manor Home hearing);

and, finally, if all else fails...

- Submit proposed Project Plan amendment to "make clear the development standards"

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Examining the process

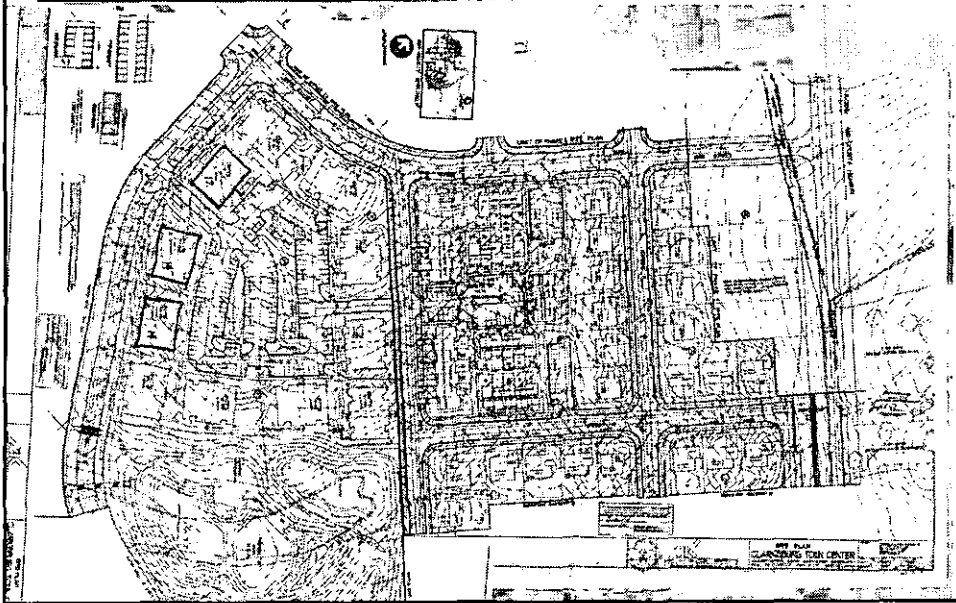
- Site Plan Phase I – Murphy Grove area (Originally part of 1B, later deemed "Phase 1B3" by the developer)

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Examining the process



Examining the process



Examining the process

- Building types and locations changed
- Streets added, removed, or repositioned
- MPDU count reduced from 40 to 10 in this area
- Amenity features removed
- Grading drastically changed from approved grade
- Environmental impacts

This is not a minor amendment!

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Examining the process – Phase 1B3

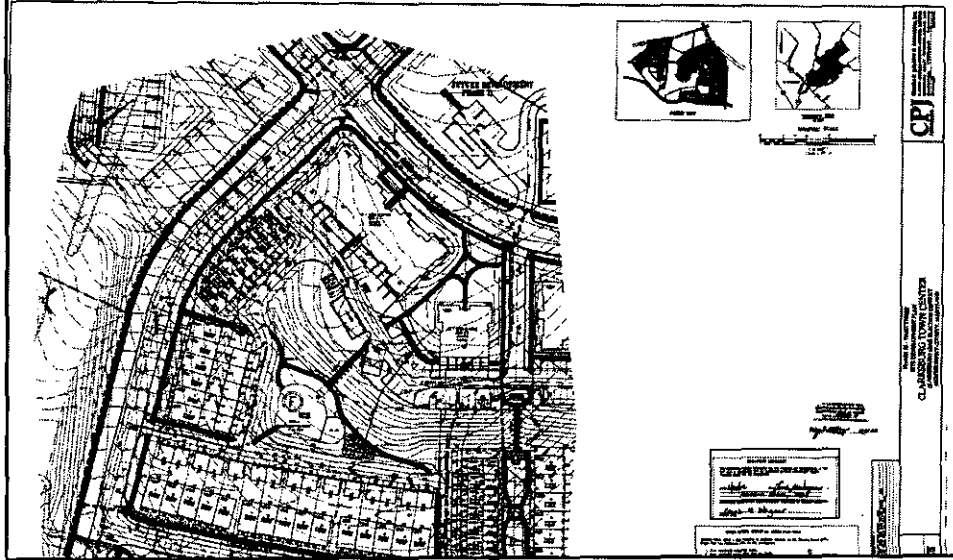
- Phase 1B3 was created by the developer with the intent to enable major changes to the Site Plan without appropriate review and approval by Board and public
- How did they do it?

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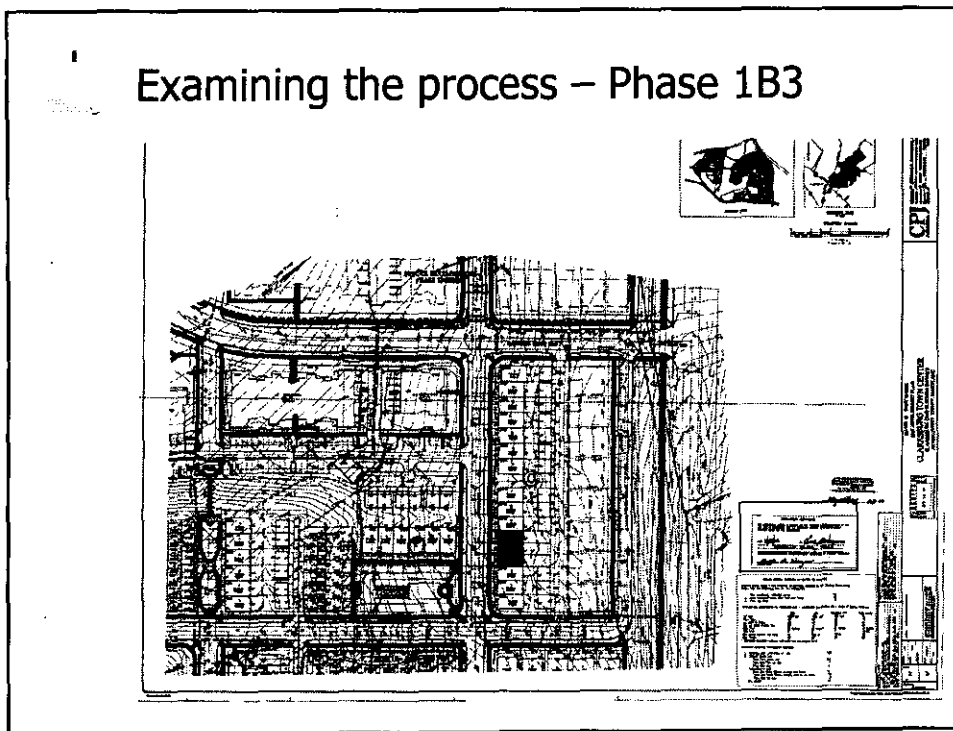
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Examining the process – Phase 1B3



Examining the process – Phase 1B3



Examining the process – Phase 1B3

- Clark Wagner's signature appears on an "approved" Site Plan "minor" amendment incorporating major project changes:
 - Revised development standards
 - Housing types and location changes
 - Street changes
 - Grading changes
 - Amenity feature removal
- Developer did not execute the certificate, rather it was executed by an agent of Bozzuto

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Examining the process – Phase 1B3

Approved Standards – Site Plan Phase I

Minimum Lot, Yard and Height Requirements for Residential Lots - modification per Section 20-C-10.1.2. of the Zoning Ordinance:

Single Family Residential	Development	Commercial/Community	Multi-Family
Min. Lot Area to Approx. 1/2 Acre	4,000	1,200	800
Min. Front Yard	10	10	10
Lot Width Min. at Street Line	30'	20'	20'
Lot Depth Min. at Building Line	40'	30'	30'
Min. Yard Min.	25	20	15
Side Yard Min.	5'	5'	5'
Min. Height Above Ground	5'	5'	5'
Maximum Height	30'	25'	25'

Residential On-Site Accessory Buildings/Lot Standards:

1. Maximum height of 12 feet
2. Maximum area of 100 sq. ft.
3. Minimum lot area of 1/2 acre
4. Minimum front yard of 10 feet
5. Minimum side yard of 5 feet
6. Minimum rear yard of 10 feet
7. Minimum lot width of 30 feet
8. Minimum lot depth of 40 feet
9. Minimum lot area of 4,000 sq. ft.
10. Minimum lot area of 1/2 acre

Altered Standards – Site Plan Phase 1B3

WAGNER'S CERTIFICATE

APPROVED

Clark Wagner

BOZZUTO'S CERTIFICATE

APPROVED

Bozzuto

WAGNER'S CERTIFICATE

APPROVED

Clark Wagner

BOZZUTO'S CERTIFICATE

APPROVED

Bozzuto

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Examining the process – Phase 1B3

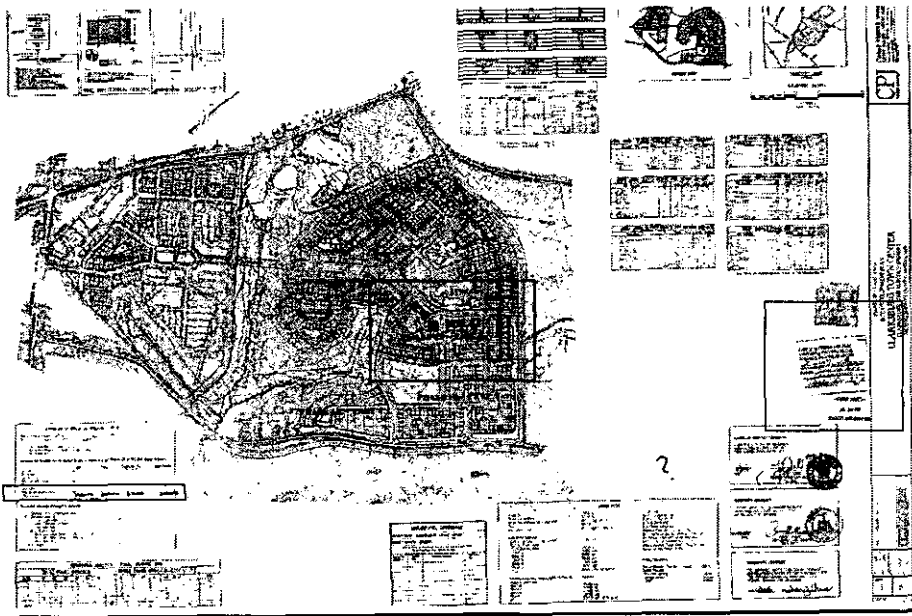
- Alterations to 1B3 area showed up previously, on the Phase 1B2 "minor amendment" to set the stage

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Examining the process – Phase 1B3



Examining the process – Phase 1B3

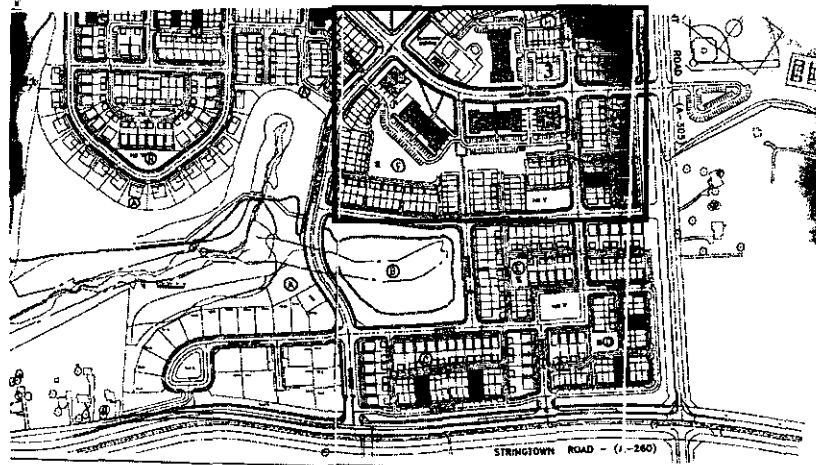
- Alterations to 1B3 area showed up as early as March, 2001, on the Developer's Map

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Examining the process – Phase 1B3



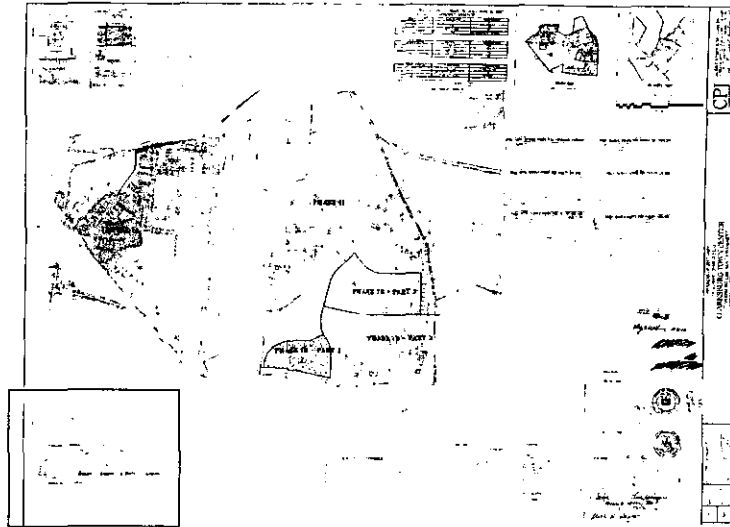
MPDU LOCATION PLAN

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Examining the process – Phase 1B3



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Examining the process – Phase 1B3

- Developer exploits the system, obfuscates information, and confuses the staff

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Fraudulent and Dubious Documentation – Examining “Minor” Amendments

- Developer first invents sub-Phases where no sub-phases are necessary
- The sub-Phases are used to facilitate “Minor” Amendments
- The sub-Phases later become a vehicle for obfuscation

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Fraudulent and Dubious Documentation – Examining “Minor” Amendments

- Site Plan Phase I (March, 1999)
 - Phase 1A
 - Phase 1B
- Amendment 1B2 (August, 2001)
**Notation of Phase 1B1 appears*
- Site Plan Phase II – Board Opinion (June 17, 2002)
 - 1-2 Phases
- Amendment Phase 1B3 (October, 2002)
- Amendment Phase 1A (May, 2003)
- Pool & Plaza Amendment (November, 2003)
- Site Plan “Signature Set” (October 14, 2004)
 - Phase 2A
 - Phase 2B
 - Phase 2C
 - Phase 2D
- Manor Home Amendments (February 10, 2005)

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Fraudulent and Dubious Documentation – Examining “Minor” Amendments

BLOCK	STREET LAYOUT	UNIT TYPES	CONFIGURATION	DENSITY
A	X	X	X	X
C	X	X	X	X
D	X	X	X	X
E	X	X	X	X
F	X	X	X	X
G		X	X	X
H	X	X	X	X
I			X	
J	X	X	X	X
K				X
L	X	X	X	X
M	X	X	X	X
N	X	X	X	X
O		X	X	X
R	X	X	X	X
S	X	X	X	X
T	X	X	X	X
AA	X	X	X	X
DD	X		X	X
EE	X	X	X	X
FF	X		X	X
GG		X	X	X

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Examining “Minor” Amendments – Phase 1A

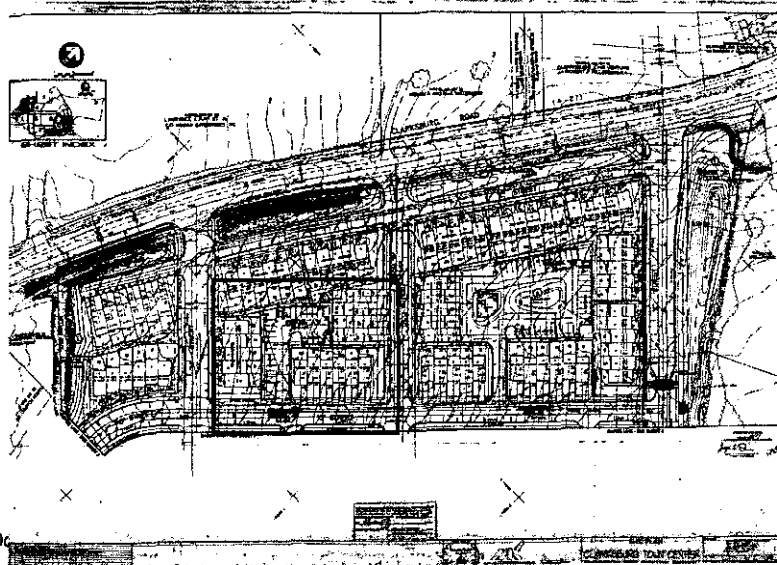
- “Approval” date – May 30, 2003
- According to a letter from Todd Brown, Linowes & Blocher, dated September 7, 2005:
 - “...the Section 1A Amended Signature Set incorporated rear loaded townhomes with detached garages.”
 - “This modification also provided the opportunity for at least two of the CTCAC principal spokespersons to purchase their homes on General Store Drive and Ebenezer Chapel Drive. The purchased units are townhomes with rear loaded detached garages. These units did not even exist on the 1999 Site Plan the CTCAC seeks to enforce...”

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Examining "Minor" Amendments – Phase 1A



Examining "Minor" Amendments – Phase 1A

- Plat submission – August, 2002
- Kim Shiley contract – January, 19, 2003
- Permit application – February 25, 2003
- Amendment approval – May 30, 2003

Examining "Minor" Amendments – Phase 1A

- Approved change did not enable Kim Shiley to execute her contract
- Contract in January, 2003 was based on current configuration (*Shiley not advised that only a different configuration was approved at that point.*)
- Approval was presumed by developer and builder

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Examining "Minor" Amendments – Phase 1B2

- Phase 1B2 approval date: August 3, 2001
- Several Plats were prepared and submitted in February of 2001, including Plat #'s:
 - 21971
 - 21972
 - 21973
 - 21975(Above referenced Plat Records show a Board approval date of April 12, 2001.)

Note: There is no real Phase 1B1...it was merely created when developer started applying the label of 1B1 to the area not amended by 1B2 and 1B3.

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Examining "Minor" Amendments – Phase 1B2

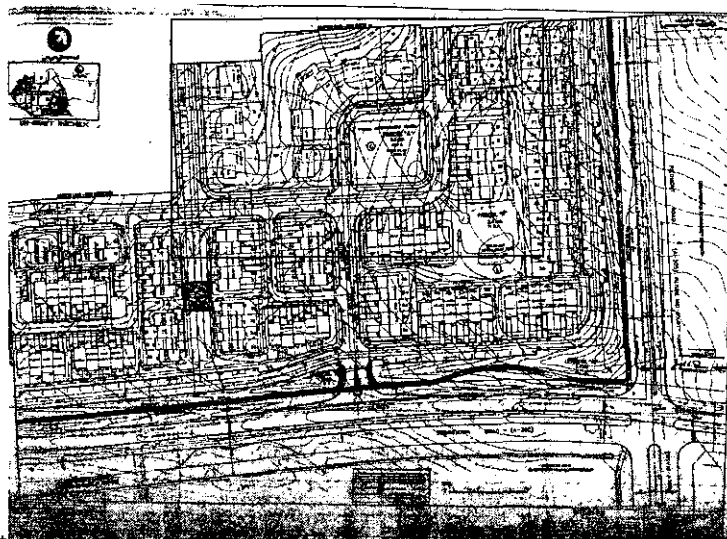
- Blocks were well thought out in originally approved Site Plan
- Developer so drastically revises blocks that new blocks are unrecognizable and are renamed (i.e. Block K becomes Block C and so on)
- Based on complete changes of the blocks, the Plan should have been presented to the Board for review

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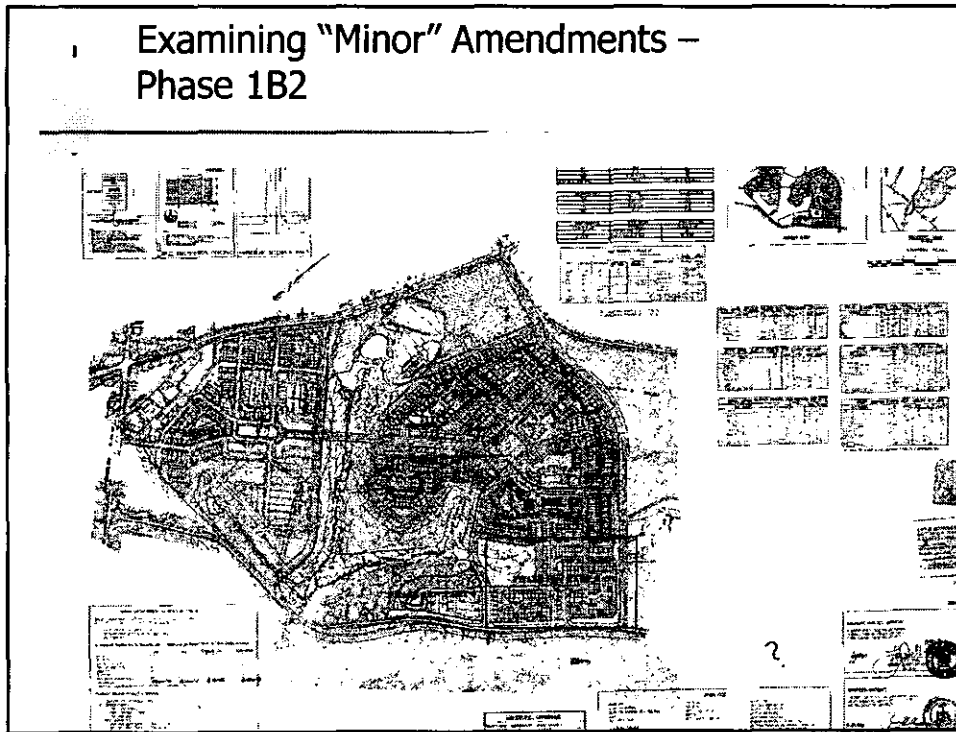
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Examining "Minor" Amendments – Phase 1B2



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Examining "Minor" Amendments – Phase 1B2



Examining "Minor" Amendments – Phase 1B2

- Original Block "K" – Phase 1B2 Block "C"
 - Revised housing type and location
 - Increased single family homes from 4 to 6 in the row at Clarks Crossing and Sugar View
 - Block becomes three sides of single family homes facing street, versus small groupings of townhomes at right angles to each other with local parks
 - Revised streets and alleys
 - Narrowed Piedmont Trail Road
 - Narrowed Sugar View Drive to 26' (should have been 36' with parking on both sides from Street "F" between Street "E" and below matchline)
 - Eliminated courtyard feature amenity (below Street "E", across from Sugar View Drive)

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Examining "Minor" Amendments – Phase 1B2

- Original Block "L" – Phase 1B2 Block "D"
 - Reduced park amenity from 2.4 acres to roughly 7,500 square feet – More than a 90% reduction in size
- Original Block "O" – Phase 1B2 Block "E"
 - Originally 14 single family homes with a .3 acre park
 - Becomes 5 single family homes and 24 townhomes with a drastically reduced green area (including park parcel reduced in size by 25%)
 - 5 single family homes are platted into HOA park (inclusive of a street)

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Board Opinion – June 17, 2002
- "Signature Set" – October 14, 2004

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Fraudulent and Dubious Documentation – Site Plan Phase II

■ Development Standards Deviation:

- As presented at the DRC meeting, CPJ and Developer-signed copy of Phase II (November, 2001), contains the approved data table
- Staff report copy (May, 2002) of unsigned Phase II contains data table with all categories as previously approved, but changes Rear Yard Setback definition to "As Shown" (Alteration is NOT called out in the report)
- Record is devoid of evidence that the Board ever intended to relax the approved standards

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Fraudulent and Dubious Documentation – Site Plan Phase II

■ Development Standards Deviation:

- Phase II "Signature Set" contains a data table that assimilates the "As Shown" definition for Rear Yard Setback
- Phase II "Signature Set" completely eliminates the building height restriction, but retains the accessory building height restriction

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Fraudulent and Dubious Documentation – Site Plan Phase II

- § 59.D.3.23(a)
 - "A plan of the proposed development including the... height... of all structures."
- A Site Plan without principal building height is an incomplete, illegal plan

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Phasing and Expectations
 - Planning Board Opinion, Condition #2 (pages 2-3):

"Within 90 days after the date of the planning board's opinion, the applicant shall provide MCPS with a proposed grading plan for the school site to allow for school construction..."

"MCPS shall have 90 days to review the proposed grading plan and provide comments to the applicant. The final grading plan shall be reviewed by planning board staff and approved prior to completion of the signature set. The signature set may include 2 phases – one phase will include the entirety of the Park/School Site and the adjacent road and the confronting units. The second phase shall include the remainder of the units in Phase II. The Applicant, MCPS and Planning Board staff shall work to resolve any remaining site grading issues. The matter can be brought back to the Planning Board for discussion if there are any unresolved issues."

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Fraudulent and Dubious Documentation – Site Plan Phase II

■ Phasing and Expectations

- The Board Opinion anticipated Signature Set at roughly 180 days post opinion issuance
- The Board provided for 2 phases only
- The Board provided opportunity to bring the matter back to the Board pursuant to unresolved issues with Park/School site
- SPEA ("Exhibit B") as prepared in February, 2003, and executed on October 14, 2004, showed only one phase for all residential in Phase II

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Despite all requirements and provisions, the developer platted prior to October 14, 2004
 - 19 Plat Records comprising 78% of the Phase II residential units (383) were approved prior to October 14, 2004
- Worse yet, 187 houses were permitted prior to October 14, 2004 and 63 fully built and transferred to private owners by that date

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Newland explanation:
 - CPJ letter (June 30, 2005):
 - "... based on a discussion that occurred prior to recordation of the plats between Wynn Witthans, Wayne Cornelius, Richard Weaver and [Les Powell]. At that time, staff agreed that because of unresolved issues that were completely beyond the control of our client between the Parks Department and Montgomery County Public Schools concerning the Park/School site within the Town Center Community, staff would allow the plats to proceed to record."

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Fraudulent and Dubious Documentation – Site Plan Phase II

- First Plat Record was submitted for processing in July, 2002
- According to Les Powell, the conversation with staff took place prior to that date
- This explanation makes no sense in light of the Board Opinion and the correspondence referenced by Newland (beginning May 20, 2003)

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Developer action makes no sense in light of the Board's authority to decide when record plats are recorded – §50-37(b)(2)
- Staff does not have the authority to waive requirements under §59-C-10.3.11(a) (RMX Optional Method development requires an approved site plan)

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Why would experienced counsel rely on an oral representation for a highly questionable approval to proceed with development?
- Proceeding with development without an approved site plan was not only unlawful, but it jeopardized the property rights of innocent third party purchasers

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Fraudulent and Dubious Documentation – Site Plan Phase II

■ Site Plan Discrepancies – Unit Types

	SFD	TH	MF	Total
Site Plan Opinion	153	202	132	487
Site Plan "Signature Set"	151	204	132	487
Developer Map	141	228	128	497

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Site Plan Discrepancies – As-built units not as shown on "signature" Site Plan
 - Block G: 4 TH and 3 SFD becomes 5 TH and 2 SFD
 - Block A: 7 TH becomes 8 TH
 - Block A: 9 TH w/4 MPDUs becomes 8 TH with 0 MPDUs
 - Block R: 5 SFD becomes 4 SFD
 - Block M: 3 SFD becomes 5 TH

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Fraudulent and Dubious Documentation – Site Plan Phase II

- Site Plan Discrepancies – To-be-built units, as shown on Developer Map
 - Block N: 7 TH becomes 8 TH
 - Block N: 5 TH becomes 6 TH
 - Block N: 5 SFD becomes 9 TH

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Fraudulent and Dubious Documentation – Site Plan Phase II

- How will Newland justify these actual and planned changes in the "Signature Set?"
- Condition #38?
- Not only is it not valid, it does not appear in the Phase II Opinion or SPEA

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PHILLIPS **IN** **THE** **THEATRE**

[illegible]

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[illegible]

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Fraudulent and Dubious Documentation – Pool & Plaza “Amendment”

- Pick your date ... it doesn't matter, all PRIOR to October 14, 2004 ... all apparently without an approved Site Plan!

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Fraudulent and Dubious Documentation

- October 6th Hearing – We advised the Board that the developer was building to their own plan
- Today, we showed you how they did it:
 - Broke down appropriate phasing into confusing sub-phases
 - Flooded the staff with changes to a well thought out and carefully designed plan
 - Made changes that were not described to the Board or staff as changes so that the impacts of those changes were never evaluated

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Fraudulent and Dubious Documentation

- Once you discount the staff-approved changes, and focus on what the Board approved after careful consideration, there is no confusion.
- There is a straightforward development plan and even more straightforward development standards – that the Board approved and the public expected to be implemented.

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Plat Records

- Multiple alleyways have been platted incorrectly. Following are examples of specific plat records highlighting this issue:

<u>Phase</u>	<u>Plat #</u>	<u>Area</u>
1A	22355	Alley at Ebenezer Chapel
1B	21971	Alley behind Sugar View
2A	22537	Alley behind Murphy Grove
2A	22533	Alley at Short Hills
1A	22367	Alley at Public House
2B	22632	Alley at Burdette Forest
1B	21973	Alley at Clarksmeade
1B	21975	Alley at Sugar View
2A	22534	Alley at Clarksmeade
2B	22631	Alley at Burnside Place

- Issues surrounding change to platting technique

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Removal of Essential Plan Features – Pedestrian Mews and "O" Street

- Mews not originally on the Project Plan, but important enough to be noted in the Phase I staff report as an amendment to the Project Plan :
 - "...The mews contains sitting areas and two large lawn panels and connecting walks, **linking the church with the Town Square.** The sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. **The mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development."**

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Removal of Essential Plan Features – Pedestrian Mews and "O" Street

- There is no dispute that the Mews and "O" Street were changed without Board approval.
- If Board approval was necessary to add the Pedestrian Mews, why wasn't Board approval necessary to remove it?
- "O" Street was an essential perimeter street, was intended to provide parking and access to the historic church, and was helpful to define the Pedestrian Mews.

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Removal of Essential Plan Features – Pedestrian Mews & “O” Street

- Newland justification for change:
 - Hedgerow preservation
 - Increased recreation space
 - Reduced curb cuts
 - Reduced impervious surfaces

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Removal of Essential Plan Features – Pedestrian Mews & “O” Street

- Were Newland’s goals realizable?
- Were they a reasonable trade-off?
- No evidence exists to indicate that staff made such an evaluation
- We are certain the Board never made such an evaluation – it was never presented to them for decision
- We are also certain the public never had any input into the decision

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Removal of Essential Plan Features – Pedestrian Mews & “O” Street



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Removal of Essential Plan Features – Pedestrian Mews and “O” Street

- The sparse record of DRC evaluation of the Phase 1A Site Plan, in a 40-minute meeting, provides no evidence of any consideration of these issues.
- Even if such an evaluation took place, it cannot substitute for the considered judgment of the Board in a public hearing process.
- In the end, all Newland can point to by way of Board approval is the Chairman’s signature on a subdivision record plat that in no way highlights the significant change.

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Removal of Essential Plan Features

- Several plan features have been quietly modified or eliminated in various sub-phase "amendments"
 - Amphitheatre (added at site plan w/removal of street)
 - Town Center basin permanent pool
 - Hilltop District basin permanent pool
- Other plan features, according to the Developer Map, seem to be headed for removal as well

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Grading Issues

- Specific grading was approved for Site Plan Phase I (containing both natural grade and intended modifications to natural grade)
- In Amendment 1B3, the developer misrepresents the "natural grade," using altered grades (2'-15' higher) rather than the original natural grade from approved Phase I
- No mention is made of grade alterations
- Other areas of the project (such as the greenway area adjacent to Overlook Park Drive) also appear to have significantly altered grading

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Grading Issues

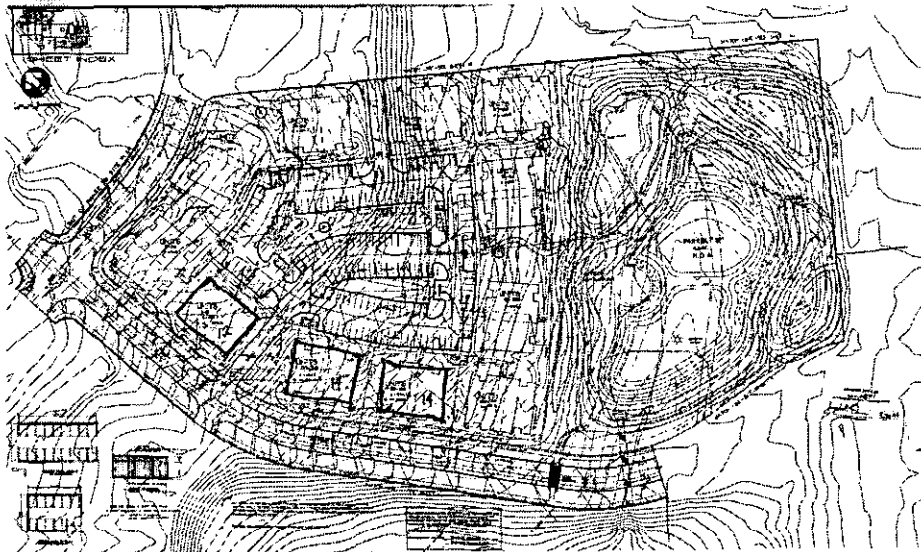
- Letter from Doug Duncan (August 18, 2005) in response to Mr. Robert Roddy:
 - "...conditions placed on the site layout approved by the Planning Board typically set limits on the changes to the existing landforms. If the site is within sensitive areas such as stream valleys or valued forested areas, the Planning Board normally limits grading so that these areas are preserved in their natural state."
- June 25, 2004 memo from Mark Pfefferle, Environmental Planning Staff:
 - Identifies Newland's historical failure "to clearly identify the grading and off site improvements that are associated with the development of this site."

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Grading Issues



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Grading Issues



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Grading Issues



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Grading Issues

- Revisions to the grade have had an interrelated impact on the aesthetic, functional, and environmental aspects of the project.

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Environmental Concerns

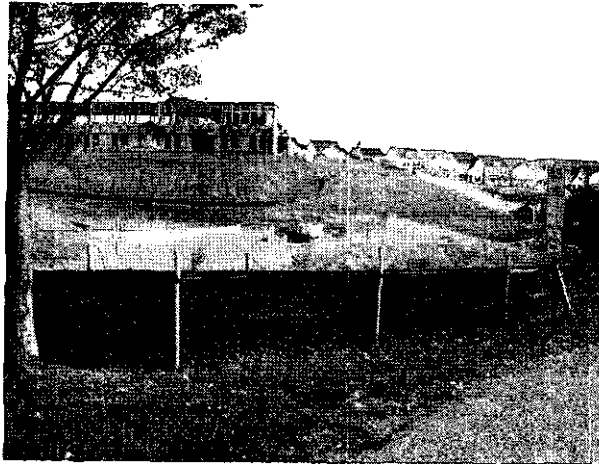
- June 25, 2004 memo from Mark Pfefferle:
 - Recommended to Wynn Witthans that further development (Phase IIIA) be held to assess compliance with "Guidelines for Environmental Management in Montgomery County"
 - Newland needs to "clearly identify all soil and erosion controls."
 - DEP "concerned with the amount of sediment entering the Town Center tributary...sediment loadings overwhelming the tributary"
- Impervious surface issues
- SWM facilities – after construction adjustments
- CTCAC has discussed the observed environmental impacts with staff

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Environmental Concerns



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Environmental Concerns



View of School/Park Site
CLARKSBURG TOWN CENTER

Exhibit 11

Octobe

84

Environmental Concerns



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Development Standard Violations

- The developer submits to the staff, in March of 2005, a proposal for Project Plan amendment.
- Among the reasons for the Project Plan amendment:
 - "to provide a clear set of development standards applicable to the project"
- Developer intent? To amend the approved standards to cover all of their previous violations
- Done to ratify NOT clarify

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Development Standard Violations

Approved Standards – Site Plan Phase I

Minimum Building Footprint per Section 55-C-10.3.3

Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

1. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

2. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

3. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

4. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

5. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

6. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

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9. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

10. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

11. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

12. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

13. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

14. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

15. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

16. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

17. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

18. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

19. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

20. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

Proposed Standards – Project Plan Amendment

Minimum Building Footprint

1. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.
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3. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.
4. Minimum building footprint shall be 10% of the total lot area, except for accessory buildings which shall be 5% of the total lot area.

Minimum Lot Requirements for Residential Lots - Modification per Section 55-C-10.3.3 of Zoning Ordinance

	Minimum Lot Area (sq. ft.)	Minimum Lot Width (ft.)	Minimum Lot Depth (ft.)	Minimum Lot Area (sq. ft.)
Single-Family Detached	10,000	30	100	10,000
Two-Family Detached	15,000	35	110	15,000
Three-Family Detached	20,000	40	120	20,000
Four-Family Detached	25,000	45	130	25,000
Five-Family Detached	30,000	50	140	30,000
Six-Family Detached	35,000	55	150	35,000
Seven-Family Detached	40,000	60	160	40,000
Eight-Family Detached	45,000	65	170	45,000
Nine-Family Detached	50,000	70	180	50,000
Ten-Family Detached	55,000	75	190	55,000
Eleven-Family Detached	60,000	80	200	60,000
Twelve-Family Detached	65,000	85	210	65,000
Thirteen-Family Detached	70,000	90	220	70,000
Fourteen-Family Detached	75,000	95	230	75,000
Fifteen-Family Detached	80,000	100	240	80,000
Sixteen-Family Detached	85,000	105	250	85,000
Seventeen-Family Detached	90,000	110	260	90,000
Eighteen-Family Detached	95,000	115	270	95,000
Nineteen-Family Detached	100,000	120	280	100,000
Twenty-Family Detached	105,000	125	290	105,000
Twenty-One-Family Detached	110,000	130	300	110,000
Twenty-Two-Family Detached	115,000	135	310	115,000
Twenty-Three-Family Detached	120,000	140	320	120,000
Twenty-Four-Family Detached	125,000	145	330	125,000
Twenty-Five-Family Detached	130,000	150	340	130,000
Twenty-Six-Family Detached	135,000	155	350	135,000
Twenty-Seven-Family Detached	140,000	160	360	140,000
Twenty-Eight-Family Detached	145,000	165	370	145,000
Twenty-Nine-Family Detached	150,000	170	380	150,000
Thirty-Family Detached	155,000	175	390	155,000
Thirty-One-Family Detached	160,000	180	400	160,000
Thirty-Two-Family Detached	165,000	185	410	165,000
Thirty-Three-Family Detached	170,000	190	420	170,000
Thirty-Four-Family Detached	175,000	195	430	175,000
Thirty-Five-Family Detached	180,000	200	440	180,000
Thirty-Six-Family Detached	185,000	205	450	185,000
Thirty-Seven-Family Detached	190,000	210	460	190,000
Thirty-Eight-Family Detached	195,000	215	470	195,000
Thirty-Nine-Family Detached	200,000	220	480	200,000
Forty-Family Detached	205,000	225	490	205,000
Forty-One-Family Detached	210,000	230	500	210,000
Forty-Two-Family Detached	215,000	235	510	215,000
Forty-Three-Family Detached	220,000	240	520	220,000
Forty-Four-Family Detached	225,000	245	530	225,000
Forty-Five-Family Detached	230,000	250	540	230,000
Forty-Six-Family Detached	235,000	255	550	235,000
Forty-Seven-Family Detached	240,000	260	560	240,000
Forty-Eight-Family Detached	245,000	265	570	245,000
Forty-Nine-Family Detached	250,000	270	580	250,000
Fifty-Family Detached	255,000	275	590	255,000
Fifty-One-Family Detached	260,000	280	600	260,000
Fifty-Two-Family Detached	265,000	285	610	265,000
Fifty-Three-Family Detached	270,000	290	620	270,000
Fifty-Four-Family Detached	275,000	295	630	275,000
Fifty-Five-Family Detached	280,000	300	640	280,000
Fifty-Six-Family Detached	285,000	305	650	285,000
Fifty-Seven-Family Detached	290,000	310	660	290,000
Fifty-Eight-Family Detached	295,000	315	670	295,000
Fifty-Nine-Family Detached	300,000	320	680	300,000
Sixty-Family Detached	305,000	325	690	305,000
Sixty-One-Family Detached	310,000	330	700	310,000
Sixty-Two-Family Detached	315,000	335	710	315,000
Sixty-Three-Family Detached	320,000	340	720	320,000
Sixty-Four-Family Detached	325,000	345	730	325,000
Sixty-Five-Family Detached	330,000	350	740	330,000
Sixty-Six-Family Detached	335,000	355	750	335,000
Sixty-Seven-Family Detached	340,000	360	760	340,000
Sixty-Eight-Family Detached	345,000	365	770	345,000
Sixty-Nine-Family Detached	350,000	370	780	350,000
Seventy-Family Detached	355,000	375	790	355,000
Seventy-One-Family Detached	360,000	380	800	360,000
Seventy-Two-Family Detached	365,000	385	810	365,000
Seventy-Three-Family Detached	370,000	390	820	370,000
Seventy-Four-Family Detached	375,000	395	830	375,000
Seventy-Five-Family Detached	380,000	400	840	380,000
Seventy-Six-Family Detached	385,000	405	850	385,000
Seventy-Seven-Family Detached	390,000	410	860	390,000
Seventy-Eight-Family Detached	395,000	415	870	395,000
Seventy-Nine-Family Detached	400,000	420	880	400,000
Eighty-Family Detached	405,000	425	890	405,000
Eighty-One-Family Detached	410,000	430	900	410,000
Eighty-Two-Family Detached	415,000	435	910	415,000
Eighty-Three-Family Detached	420,000	440	920	420,000
Eighty-Four-Family Detached	425,000	445	930	425,000
Eighty-Five-Family Detached	430,000	450	940	430,000
Eighty-Six-Family Detached	435,000	455	950	435,000
Eighty-Seven-Family Detached	440,000	460	960	440,000
Eighty-Eight-Family Detached	445,000	465	970	445,000
Eighty-Nine-Family Detached	450,000	470	980	450,000
Ninety-Family Detached	455,000	475	990	455,000
Ninety-One-Family Detached	460,000	480	1,000	460,000
Ninety-Two-Family Detached	465,000	485	1,010	465,000
Ninety-Three-Family Detached	470,000	490	1,020	470,000
Ninety-Four-Family Detached	475,000	495	1,030	475,000
Ninety-Five-Family Detached	480,000	500	1,040	480,000
Ninety-Six-Family Detached	485,000	505	1,050	485,000
Ninety-Seven-Family Detached	490,000	510	1,060	490,000
Ninety-Eight-Family Detached	495,000	515	1,070	495,000
Ninety-Nine-Family Detached	500,000	520	1,080	500,000
Hundred-Family Detached	505,000	525	1,090	505,000

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Development Standard Violations – Streets & Alleys

- Road Construction Code, Chapter 49, Article II. Section 49-34(f)(1) provides that the width of a tertiary residential street (which most of the internal CTC streets are) is as follows:

	Two-way traffic	One-way traffic
Right-of-way	27' 4"	21' 4"
Pavement	26'	20'

- For alleys, § 49-34(g) provides that the paved surface must not be less than 16'.
- Subdivision Ordinance does not vary these standards for Site Plan approval. § 50-26(h)
- Our review of the Phase I Site Plan (Sheet A) discloses that it was approved in conformity with these standards.

October 25, 2005

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Development Standard Violations – Streets & Alleys

Vegetary or Higher Streets - One and Two-Way Under 20' and 26'	Measurement
Benton Park above circle	25.4
Blacksmith	24.2
Blacksmith Dr near Burdette Forest	23.7
Branchline Wy	18.5
Burdette Forest	23.8
Burdette Forest near bldg 10	24.3
Burnside Place	23.5
Catawba Hill at Short Hills	24.5
Clarke Crossing at Pool	23.9
Clarke Crossing near Snowden Farm	24.9
Clarksburg Square Rd	24.3
Clarksmead in front of Miller and Smith homes	14.4
Clarksmead	24.4
Clarksburg Rd	23.3
Ebenezer Chapel	24.1
Ebenezer Chapel	24.3
Fox Lane	14
Grapewine Ridge	17.9
Grapewine Ridge at Catawba	17.7
Grapewine Ridge near Clarksburg Sq	17.8
Murphy Grove in front of NY SFH	17.9
Murphy Grove near Pond	24.5
Overlook Park near dead end	18
Piedmont Trail Rd	16.8
Piedmont Trail Rd near machine	11
Piedmont Trail Rd where it becomes alley	11
Public House near Ebenezer Chapel	24.3
Short Hills behind SF	12.5
Short Hills Dr	24.6
Super View	24
Superior Chapel Dr	24.2
Trading Post Dr	24.1
Trading Post	12.2
Turn into Clarksburg at Square	13.8

Please note: changes to follow. Tables provided for document chronology reference only.

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Development Standard Violations – Streets & Alleys

Alleys Under 16'	Measurement
Alley at Snow Hill	14
Alley behind Benton Park at Short Hills	15.6
Alley behind Benton Park Circle near townhomes	14.2
Alley behind Burdette Forest at Benton Park Circle	14.6
Alley behind Burdette Forest at Short Hills	14.6
Alley behind Carriage houses on Monmouth	13.7
Alley behind Carriage houses on Murphy Grove	13.7
Alley behind Clarke Crossing	13.3
Alley behind Clarksburg	14
Alley behind Craftsman and NY off Murphy Grove	13.7
Alley behind Ebenezer Chapel	13.9
Alley behind Ebenezer Chapel at General Store	13.9
Alley behind Ebenezer Chapel Dr near bioretion area	13.9
Alley behind Murphy Grove NY SF	13.4
Alley behind Murphy Grove off Snowden	13.6
Alley behind Overlook Park where it curves and ends	11.4
Alley behind TH near Murphy Grove	13.7
Alley behind TH between Burdette Forest and Branchline	13
Alley behind Trading Post Dr	14
Alley behind Trading Post Dr	14.1
Alley between Catawba and Grapewine Ridge	13.8
Alley between Clarke Crossing and Clarksburg Sq Rd	13.9
Alley between Grapewine Ridge and Clarksmead	13.9
Alley between townhomes at Burnside Place	14.9
Alley dead end to Clarksburg near Miller and Smith SFD	14.1
Alley intersecting Public House	13.4
Alley intersecting Public House near Craftsman houses	14.9
Alley intersecting Public House near Miller and Smith SFD	13.7
Alley near NY's off CCE	14
Alley near planned corridor off Clarksburg	15.5
Alley near to MS Short Hills	14
Short Hills Alley	13.4
Short Hills Alley near TH	11.9
Alley off Catawba Hill Dr	13.3
Alley off Clarke Crossing near pool	14.1
Alley off Clarksmead	14
Alley off Piedmont Trail Rd	14
Alley off Trading Post	13.8

Please note: changes to follow. Tables provided for document chronology reference only.

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Development Standard Violations – Net Lot Square Footage

- The Project Data Table specifies that the net lot area for single-family dwellings is 4,000 sq. ft. The table itemizes the lots noted by CTCAC to be substandard:

Plot #	Block	Lot	Net Sq.Ft
21971	C	48	3,200
21971	C	49	3,796
21971	D	39	3,827
		40	3,827
21973	D	2	3,990
		3	3,990
		4	3,990
21975	C	44	3,271
		45	3,236
		46	3,212
		47	3,201
22537	D	2	3,694
		3	3,694
		4	3,694
		5	3,694
		6	3,694
		7	3,694
		8	3,692
22594	D	13	3,900
		14	3,969
22534	H	17	3,934
22631	S	4	3,892
		5	3,969
22783	M	10	3,728
		11	3,551
		12	3,467
		16	3,249
23046	K	7	3,840
		8	3,840
		9	3,840
		10	3,840
		14	3,874
23049	N	15	3,890
		16	3,890
		17	3,890

October 25, 2005

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Development Standard Violations – Rear Yard Setback

- Approved standards:
 - Townhouse – 20'
 - Single Family – 25'
 - Multi-Family – 10'

October 25, 2005

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Development Standard Violations – Rear Yard Setback (SFD)

CTCAC finds 34 SFD violate
the 25' Rear Yard requirement

*Please note: changes to follow. Tables
provided for document chronology
reference only.*

Street	Lot/Block	Measurement
SFD NV on murphy grove	1 O	18.6
Benton Park Circle	10 M	11.1
Benton Park Circle	11 M	14.7
Benton Park Circle	12 M	12.3
Benton Park Circle	13 M	13.8
Benton Park Circle	14 M	9
Sugar View	15 A	16.5
Benton Park Circle	15 M	8.9
Benton Park Circle	16 M	10.2
SFD NV on murphy grove	2 O	19.8
SFD NV on murphy grove	3 O	20.4
Brightwell Square	31 E	22.6
Brightwell	32 E	22.8
Brightwell	33 E	22.2
Brightwell	34 E	21.9
Clarkridge	34 FF	23.9
near brightwell square	38 D	19.5
near brightwell	38 D	20.4
SFD NV on murphy grove	4 O	21
near brightwell, tot lot	40 D	18.3
near brightwell, triangular apron for lot	41 D	2.7
Sugar View	44 C	21.6
Sugar View	45 C	21
Sugar View	46 C	18.6
Sugar View	47 C	18.8
Sugar View	48 C	18.3
Sugar View	49 C	18.9
SFD NV on murphy grove	5 O	18.3
SFD NV on murphy grove	6 O	18.3
Burdette Forest	7 O	18
Burdette Forest Dr Porten	70 A	23.5
Burdette Forest Dr Porten	73 A	23.7
SFD NV on murphy grove	8 O	18.8
near brightwell across from carriage homes	40 D	18.3

October 25, 2005

Prepared by CTCAC

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Development Standard Violations – Rear Yard Setback (Townhomes)

CTCAC finds 74 Townhomes violate the
20' Rear Yard Requirement

*Please note: changes to
follow. Tables provided for
document chronology
reference only.*

Rear Yard Setback Violations - Townhomes (20')

Street	Lot/Block	Measurement
Murphygrove Wy	1 E	18.8
Clarka Crossing Dr	1 F	18.1
Clarkridge	1 FF	18.3
Trading Post	1 L	18
Clarkridge	10 FF	18.8
Clarkridge	11 FF	18.6
Clarkridge	12 FF	18.6
Clarkridge Rd	13 FF	18.4
Murphy Grove	15 E	16.6
Murphy Grove	16 E	13.6
Murphy Grove	17 E	18.1
Benton Park Circle	17 M	8.4
Murphy Grove	18 E	10
Benton Park Circle	18 M	13.2
Clarkland near Murphy Grove	18 M	18.3
Benton Park Circle	19 M	12.6
Benton Park Circle	19 M	12.8
Benton Park Circle	19 M	12.8
Murphygrove Wy	2 F	18.5
Clarka Crossing Dr	2 FF	18.5
Clarkridge	20 M	13.7
Benton Park Circle	20 M	14.1
Clarka Crossing Dr	24 A	7.3
Clarka Crossing Dr	26 A	8.4
Clarka Crossing Dr	27 A	8.4
Clarka Crossing Dr	28 A	7
Clarka Crossing Dr	29 A	8.7
Clarkridge	3 FF	18.6
Benton Park Circle	30 A	8.8
Benton Park Circle	31 A	12.5
Benton Park Circle	32 A	11.8

Rear Yard Setback Violations - Townhomes (20')

Street	Lot/Block	Measurement
Piedmont Trail Rd	32 O	18.8
Branchville	33 A	12.2
Piedmont Trail Rd	33 O	15.2
Public House	33 O	15.2
Short Hill	33 FF	14.4
Branchville	33 J	8.2
Piedmont Trail Rd	34 A	12.2
Short Hill	34 O	15.3
Branchville	34 J	12
Piedmont Trail Rd	36 A	14.3
Public House	36 O	15.3
Short Hill	36 FF	12.7
Piedmont Trail Rd	36 J	8.9
Public House Rd	38 O	17.1
Short Hill	36 FF	12
Piedmont Trail Rd	38 J	8.9
Public House Rd	37 O	15.3
Clarkridge	37 FF	11.9
Short Hill	4 FF	18.5
Short Hill	42 J	8.8
Short Hill	41 J	15.8
Clarkridge	42 J	16.8
Clarkridge Square Rd	44 A	12.7
Clarkridge Square Rd	45 A	13.2
Clarkridge Square Rd	46 A	13
Clarkridge Square Rd	46 A	13.6
Clarkridge	46 A	11.4
Clarkridge Square Rd	47 A	12.3
Clarkridge Square Rd	48 A	11.4
Clarkridge Square Rd	51 A	12
Clarkridge Square Rd	52 A	11.7
Clarkridge Square Rd	52 L	12.4
Clarkridge Square Rd	53 A	11.1
Clarkridge	54 A	12
Clarkridge	55 FF	18.6
Clarka Crossing Dr	7 A	4.8
Clarkridge	7 FF	19
Clarkridge	8 FF	18.8
Genesee Sq	58 A	18.2

October 25, 2005

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Development Standard Violations – Rear Yard Setback (Multi-family)

CTCAC finds 7 Multi-family units
Violate the 10' Rear Yard requirement

Rear Yard Setback Violations - Multi-Family (10')

Street	Lot/Block	Measurement
Clarksburg Square Rd	Parcel M, Block A	18
Clarksburg Square Rd	Parcel M, Block A	10.1
Clarks Crossing at Clarksburg Sq	Bldg 1	11.6
Clarksburg Square Rd	Bldg 2	17.1
Overlook Park	Parcel AA	3.7
Clarksburg Square Rd	Parcel B block M	10.8
Clarks Crossing	Parcel H	8.7

Please note: changes to follow. Tables provided for document chronology reference only.

October 25, 2005

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95

Development Standard Violations – Minimum Distance Between End Buildings

- Approved standards:
 - Townhouse – 20'
 - Multi-Family – 30'

**Minimum Yard Space Between Buildings -
Townhomes (20')**

Location	Block	Lot	Measurement
Clarks Crossing	H	16&17	8.8
Clarks Crossing Drive near pool	J	27&28	16.9
Clarksburg Square Road	FF	21&22	11.7
Clarksburg Square Road	G	30	9.2

**Minimum Yard Space Between Buildings -
Multi-Family (30')**

Location	Block	Lot	Measurement
2/2s next to Craftster Townhouse	M	70	9.6
Clarksburg Square Road, MPDU 2/2s	A	89	21.1
Manor Home to Townhouse	AA	1	7.8
Manor Home to Townhouse	AA	31	2.5
Manor Home to 2/2	S	Bld. 10	<5
Manor Home to SFD	S	5	<5
Manor Home to Townhouse	H	1	18.4

Please note: changes to follow. Tables provided for document chronology reference only.

October 25, 2005

Prepared by CTCAC

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Development Standard Violations – Accessory Buildings % Yard Coverage

- Approved standards:
 - Accessory buildings must not cover more than 50% of rear yard
 - There would be many violations, except that we counted driveway aprons – even though they are impervious surface and do not contribute to the spaciousness of the rear yard
 - We question whether the Board intended the standard to give credit for driveway aprons within the rear yards
 - If the staff agrees with us on this point, we will do additional calculations to provide a comprehensive violation list

October 25, 2005

Prepared by CTCAC

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Height Violations

- CTCAC has submitted an annotated copy of the developer's (CPJ version) of project height violations (Attachment 6 to the October 18, 2005 Letter)
- CTCAC agrees to the 491 number as the correct unit count
- Multi-Family
 - CPJ finds 35 of 48 units in violation
 - CTCAC finds 36 of 48 units, including Bozzuto Bldg. #2, in violation
 - CTCAC also finds increased height violation on 16 of 35 units (using CPJ's own data)

October 25, 2005

Prepared by CTCAC

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Height Violations

- Townhomes
 - CPJ finds 272 of 443 units in violation
 - CTCAC finds 306 of 443 units in violation
 - CTCAC also finds increased height violation on 27 of the 272 units CPJ found in violation (using CPJ's own data)

October 25, 2005

Prepared by CTCAC

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Height Violations

- Measurement methods – Average Ground Height
 - CPJ used an "average ground height" to measure 32 units, based on a consideration of units being more than 35' from the street
 - According to DPS, the closest street (even if an alley) can and should be used for measurement if within 35'
 - All units listed by CPJ to be more than 35' from the street are, in fact, within 35' of a street or alley

October 25, 2005

Prepared by CTCAC

100

Height Violations

- Measurement methods – Terracing
 - DPS policy is to give no terrace unless the terrace is a natural element in comparison with adjacent lots
 - The Board of Appeals determined independently that this was an appropriate guideline for defining a terrace, as found by the Court in Siegel v Montgomery County, Case #1321, Sept. term 2004 (May 26, 2005)
 - CPJ applied a terrace credit for 30 units where it was unjustified

October 25, 2005

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Height Violations



October 25, 2005

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102

Front Yard Setback Violations

- Previously adjudicated
- Staff Report – 102
- CPJ – 97
- CTCAC did not investigate this discrepancy

October 25, 2005

Prepared by CTCAC

103

Grandfathering of Units

- May 31, 2005 – Craftstar offers buyers under contract the opportunity to cancel with full refund
- Builders should not be allowed to initiate construction on anything in violation after they were on notice of the risk of going forward
- CTCAC would like to examine the legitimacy of contracts that builders claim establish grandfathering rights
- Board made clear on July 7th that grandfathering would not extend beyond building height and front yard setback.

October 25, 2005

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MPDU Violations

- Site Plan Phase I was approved in March, 1999
- Site Plan Phase II was approved in May, 2002
- Developer went to DHCA with a very different phasing schedule from that approved by the Board

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MPDU Violations

- Developer Violations (subject to DHCA jurisdiction)
 - Developer failed to enter into an agreement with DHCA prior to May 31, 2002. All plats and permits prior to that date were in violation of Section 25A-5(b).
 - Developer submitted a phasing plan to DHCA (Exhibit A) that was not based upon the previously approved Site Plan phasing.
 - In the same month (May, 2002) that the developer presented to the Board a Phase I of 768 units, and a Phase II of 487 units, the developer then advised DHCA that Phase I consisted of 457 units, and invented a Phase III of 356 units

October 25, 2005

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106

MPDU Violations

- Developer Violations (subject to DHCA jurisdiction)
 - Even if the DHCA phasing plan were valid, the developer departed from Exhibit A construction schedule without prior DHCA approval
 - Davidson letter of October 11, 2005 confirms that Newland is in violation

October 25, 2005

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107

MPDU Violations

- Developer Violations (subject to DPS jurisdiction)
 - Developer sought and obtained building permits from DPS before entering into the MPDU agreement with DHCA (on May 31, 2002).
 - In Phase 1B alone, 109 building permits were applied for
 - This violates Section 25A-5(b)

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MPDU Violations

- M-NCPPC Role
 - Site Plan designates MPDU locations
 - SPEA specifies that the Site Plan and Record Plats must identify all MPDU locations (SPEA Exhibit B – Page 7)
 - 1995 Site Plan Guidelines for Projects Containing MPDUs, Guideline 16:
"Clearly state on the record plat that the site provides MPDUs, the location of which are shown on the site plan."
 - Section 50-36(d)(2) Subdivision record plat must show the following items, as applicable in each case:
 - Section 50-36(d)(2) t –
"Any other element for inclusion on the record plat must be authorized by law, regulation or Planning Board Guideline."

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MPDU Violations

- Developer Violations (subject to Planning Board jurisdiction)
 - Every plat record fails to clearly state that the site provides MPDUs, the location of which are shown on the Site Plan
 - Every record plat fails to show which lots are MPDU locations
 - Developer failed to build MPDUs in the locations as designated on the approved Site Plan for Phase I
 - Unauthorized changes in phasing and unit types resulted in elimination or relocation of MPDUs throughout the Project

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MPDU Violations

- We agree with the Board discussion during the October 6th hearing, that verbal approval to change MPDU locations is unacceptable
- Current developer plan reflects an uneven distribution:
 - Phase I = 8.4%
 - Phase 2 = 25.6%
 - Phase 3 = 17.5%
 - Geographically imbalanced:
 - West Side (Town Square) - 50% greater MPDU concentration
- MPDUs were the victims of the process that ignored interrelationships of approved Plan elements as unauthorized amendments were made

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Quality of Amenities

- Localized amenities are insufficient, unattractive and appear as an afterthought rather than effectively designed to serve the community.
- With multiple, unauthorized Plan changes, the focus is on the income-producing elements (the kind, location and number of dwelling units); Quality or meaningful integration of amenities is secondary

October 25, 2005

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Quality of Amenities

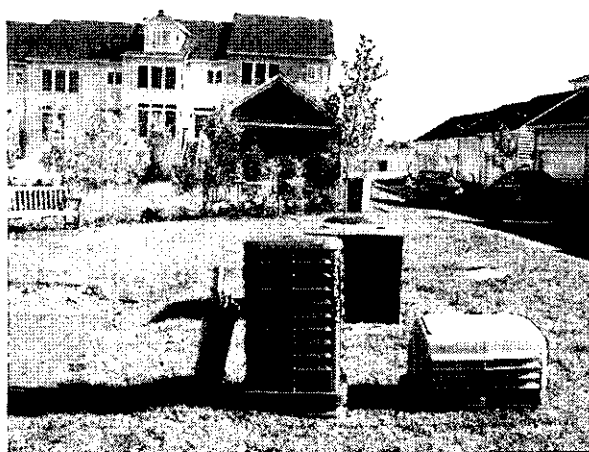
- The developer alleges that they have provided a "significantly greater number of amenities of higher quality than reflected on the original approved plans." (Newland Letter September 7, 2005 – Page 5)
- How would CTCAC, the Community, OR the Board know? The Board was not given opportunity to assess the changes and the public was not given an opportunity to provide input
- CTCAC agrees with the Staff Report (Attachment 1 – Page 7) that there are "unmistakable deficits in recreation for almost every age group, but particularly for teens and adults."

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Quality of Amenities



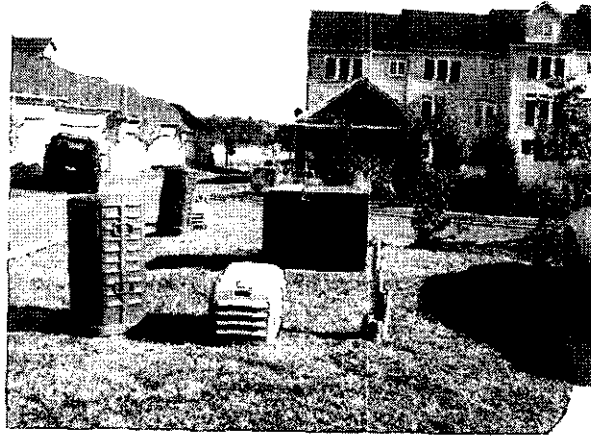
Right Side of Alley

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Quality of Amenities



Left Side of Alley; these are not the same utility boxes

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Parking Violations

- Project Plan contemplated 596 on-street spaces (exception to general rule of off-street parking for residences)
- 596 based upon 1,300 dwelling units with 38% multi-family
- Developer map shows 35% multi-family, with 1,215 total dwelling units
- *Both changes predict less on-street parking*

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Parking Violations

- Phase I – 573 on-street spaces
 - Phase 1A – 359
 - Phase 1B – 214
- Leaves **23** spaces for Phase II
- Phase II “Signature Set” – **264** on-street spaces

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Parking Violations

- 264 estimate is too low, given units projected for Phase II:
 - 132 Multi-family = 198
 - 355 Single family = 710
 - Total spaces 908
 - Garage spaces (408)
 - Other off-street (90)
(150% estimate)
 - Total on-street 410

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Parking Violations

- Hundreds of on-street parking spaces above initial projection – number of on-street parking spaces should actually be going down
- Without a valid Phase II plan, we simply have an unregulated increase in on-street parking (Where is the waiver?)
- This is worsened by the fact that many garages are substandard for two-car garages
- Further reduction of available on-street space due to narrowed streets and fire code requirements

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Parking Issues

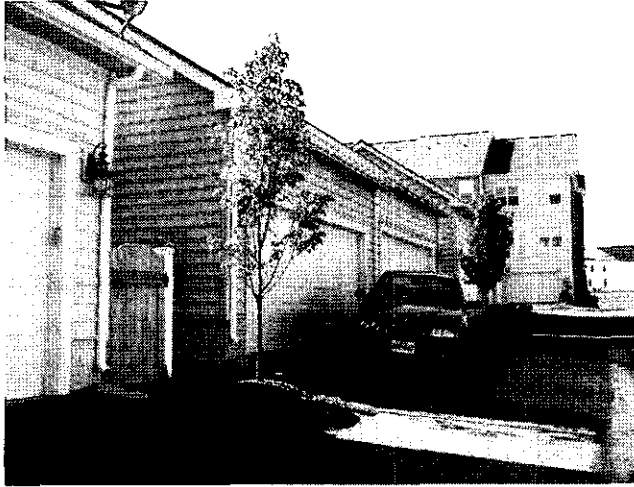


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Parking Issues

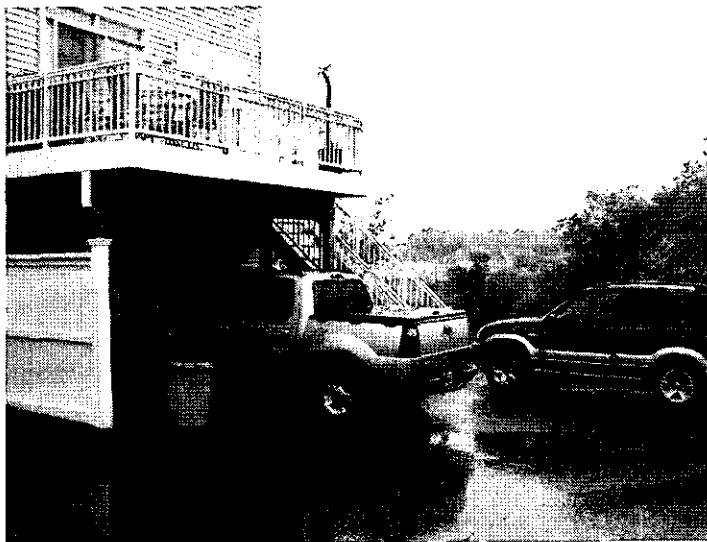


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Parking Issues

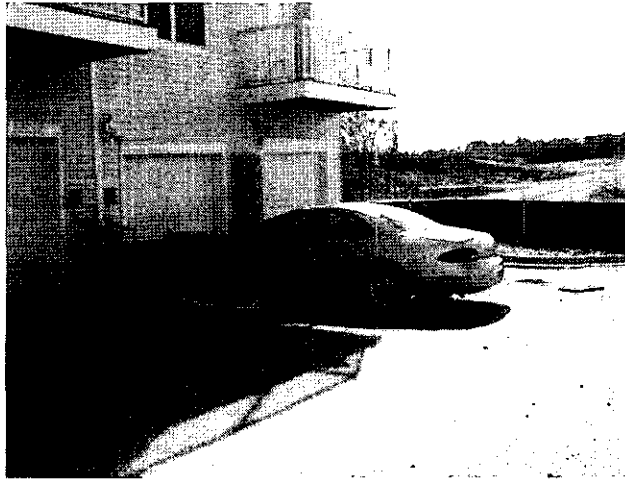


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Parking Issues



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Manor Home Amendments

- Manor Homes originally approved as 9-unit dwellings (1 – Phase I; and 4 – Phase II)
- June, 2004 and August, 2004 – Developer plats and permit for 12-unit dwellings (both Phases)
- Nevertheless, the Board is asked to approve a change from 9 to 12-unit dwellings on February 10, 2005
- WHY?!

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Manor Home Amendments

Note: Full chronology included at Tab 10 of July 7, 2005 Hearing Packet:

Date	Action	Action Detail	Comments
October 11, 2004	Meeting at M-NOPPC with Nellie Maskal. Meeting with Michael Ma. Research, review and document copying	Kim Bailey and Amy Presley spent four hours at M-NOPPC continuing to search for site plans, meeting with Nellie Maskal and then Michael Ma, and reviewing and copying documents. Met with Nellie Maskal first to determine how to access appropriate documents. Nellie advised that Wynn Withers should be able to provide site plans (with height references) for the buildings in question and also referred us to Michael Ma for further assistance regarding enforcement issues. Met with Michael Ma to discuss issues to date with lack of responsiveness from Wynn, difficulty in accessing information that should be readily available in the files, and specific concerns about the height of the Bozzuto condominiums. Discussed with Michael our findings to date regarding inconsistencies with data tables and other records.	Wynn Withers did not assist with our efforts, but once again merely allowed us to search through her files. There was great difficulty in locating pertinent documents. As of this date, we were still unable to retrieve site plans specific to the Bozzuto condominiums or plans pertinent to June 22's. The situation was discussed at length with Michael Ma. Michael advised that he was unfamiliar with the Clarkburg Town Center project, but that he would review the site plans and files to investigate the issue. We discussed our fear that architectural buildings were going to be built that also might violate the height restrictions. He stated that staff may have made a mistake with site plans for the Bozzuto condominiums, but that he would ensure that no future mistakes were made. He also referred us to Douglas Johnson, advising that we should request an inspection/site plan enforcement visit from him.
October 12, 2004	Meeting with CTCAC and Newland	Meeting held in Rockville (at conference location on Rockledge Drive). Attendees: Newland: - Rick Courteau, Regional Vice President - Kim Ambrose, Vice President - Lee Powell, CPJ - Todd Brown, Linowes & Blocher Guests, City/County: - David Klorvins CTCAC: - Kim Bailey - Carol Smith - Amy Presley - Jan Jackson - Tim Deemore - Randy Delahni - Joel Richardson - Mark Murphy	Discussions were held regarding the residents' desire for a true new urban design and Town Center that would serve as a strong focal point and draw for the community and beyond (in accordance with the goals of the Master Plan). Comparisons were made by David Klorvins to Bethesda Row and the intent to design a center along those lines (although scaled back) was expressed. The CTCAC presented ideas gathered by the community as well as issues of the most concern, including the 63,000 sq. ft. allocation of retail for a grocery store. Newland verbally committed to incorporating the ideas and addressing the issues as discussed with the CTCAC team and to preparing revised design options for presentation and review at a meeting to be held October 28, 2004. Committee asked for verification of heights of condos and 22's and Newland advised that they would get that information for us.

October 25, 2005

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Manor Home Amendments

Date	Action	Action Detail	Comments
October 13, 2004	Email to Kim Ambrose, Newland	Email from Amy Presley to Kim Ambrose, thanking her for hosting the meeting between Newland and CTCAC.	(Email attached.)
October 13, 2004	Email to Nellie Maskal	Email from Amy Presley to Nellie Maskal thanking her for her time and assistance, and for her referral to Michael Ma.	(Email attached.)
October 13, 2004	Email to Michael Ma	Email by Amy Presley to Michael Ma confirming issues discussed with him on October 11, 2004. Excerpts from email: - "We appreciate your willingness to review existing site plans to determine compliance with the Master Plan and Project Plan guidelines. We will also be further reviewing the issues we discussed relative to placement of significant buildings and other potential deviations to initially proposed site designations for various residential, commercial and amenity locations." - "We were unable to find a copy of the approved site plan containing the Bozzuto condominium we discussed, and Wynn was only able to advise us that she confirmed with the developer that it was 4 stories..." - "We appreciate your offer to follow up on the specific height issue relative to the 4-story/45' height limitation clearly designated within the Project Plan Guidelines vs. the Bozzuto condominium height which we are certain exceeds the limitation." - "As you directed, we will be in touch with Douglas Johnson to discuss our concerns and request zoning enforcement assistance." - - - - "...we appreciate your further investigation."	(Email attached.)

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Manor Home Amendments

Date	Action	Action Detail	Comments
October 26, 2004	CTCAC meeting	Meeting held at the home of Kim Shiley to discuss design options presented by Newland and prepare responses.	Key issues included the need for more retail, better allocation of space, and elimination of proposed residential units. (Meeting Agenda attached.)
November 5, 2005	Meeting with CTCAC and M-NCPPC	Purpose of meeting was to review and discuss retail design options presented by Newland and to get clarification on current issues relative heights of buildings, etc. Meeting attendees included John Carter, Nellie Markel, Michael Ma, Sue Edwards, and Wynn Withams from M-NCPPC; Kim Shiley, Carol Smith, Tim Duenno, Niran Nagda, Lynn Fardle, and Tricia Larcade of CTCAC; and Kellie Huley of DCA.	Discussions focused on community upset over retail center - proposed residential units, reduction in retail square footage and size of grocery. Option for moving library from the town square green to the retail area was suggested by M-NCPPC as a potential to alleviate parking concerns. Committee agreed this could be an acceptable option. Issue of building heights was again brought up and Wynn Withams advised that she had received information from the developer stating that the buildings in question were 67'. She also stated that the buildings conformed to the "four story" requirement of the Project Plan.
November 8, 2006	Email to Wynn Withams	Email to Wynn Withams from Amy Presley on behalf of the CTCAC. Letter confirmed the Committee's disapproval of Wynn's positioning of buildings in question as acceptable and requested action regarding buildings in violation. (Email attached.)	Excerpt from letter: "... disturbed to hear that you would attempt to position the buildings in question as acceptable based on a 'four story' height limitation, when the Project Plan Guidelines specifically define the height limitation as 45' for residential. We certainly expected that M-NCPPC would not only be aware of the guidelines, but would diligently ensure adherence to such." "The CTCAC unanimously agrees that buildings exceeding the height restrictions in the project plan guidelines must be altered to comply." "We must also have assurance from M-NCPPC that existing approved site plans that are in violation of Project Plan guidelines (conditions and findings) will also be addressed with the Board and appropriately rectified with the developer. Further we would expect that more stringent attention will be given to future site plan reviews to ensure adherence to all Project Plan conditions and findings. The CTCAC representatives present at the meeting were pleased to hear your assurances on these issues. Please advise us of your action plan for handling the existing site plan violations."

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Manor Home Amendments

Date	Action	Action Detail	Comments
November 8, 2004	Letter to Kim Ambrose, Newland	Letter to Kim Ambrose from the CTCAC. Letter outlined Committee responses to options presented by Newland at the October 26, 2004 meeting. Letter also emphasized that Committee was meeting response on height issues. (Letter attached.)	Excerpt from letter: "In our meeting of August 26, 2004, the issue of the height of the existing condominiums with reference to the 45' height restriction in the approved Project Plan was raised, as was the height of the proposed two over two townhouse condominiums. Over the last two months, while we have repeatedly asked, we have not received specific answers or architectural drawings that clarify the height issues. We know that such information should be readily available with your architectural and engineering staff and/or subcontractors." "The simple fact that our request has not been met leads us to conclude that there could be a problem. With respect to our serious concern with the height issue we want to stress again that the limits on heights, as approved in the project plan and pursuant to Chapter 56 of the Montgomery County code Project Plan must be met. Should these specified limits be exceeded in the construction to date that would constitute a violation which (i) would require remedial action with reference to the offending existing structures and (ii) assurance from you and your subcontractors that such limits will be abided by in all current and future development in the Clarksburg Town Center."
November 16, 2004	Email to Wynn Withams	Email to Wynn Withams from Amy Presley on behalf of the CTCAC. Email confirms that CTCAC has not yet heard back from Wynn regarding the action plan for height violations. (Email attached.)	Excerpt from email: "We haven't heard back from your office yet regarding the action plan for height violations discussed at the meeting with the CTCAC and your team on November 8". We would like to know specifically what actions the M-NCPPC is planning to take. We would also like to know whether the CTCAC should write to Derek Reagin and the Planning Board to request action on this violation. Please include that information in your update to us."

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Manor Home Amendments

January 10, 2005	Meeting with Derrick Barlage, M-NCPPC Chairman	<p>Meeting with Derrick Barlage, John Carter and Sue Edwards of M-NCPPC and Amy Presley, Kim Shiley, and Carol Smith of CTCAC. Meeting was scheduled by Committee to discuss the serious nature of the violations within CTC, to alert the Chairman to the length and scope of the Committee's attempts to gain resolution through M-NCPPC staff, and to inform the Chairman to issue a violation notice to the developer.</p> <p>Committee prepared a Table (Clarksburg Town Center Development - Documentation Relative to Height Restrictions) for discussion with Derrick. (Note: At the time of scheduling the meeting with Derrick, the Committee just received Rose Krasnow's letter. The Committee had not yet formally responded, but brought the letter to the meeting with Derrick for discussion.)</p> <p>Committee discussed history of interactions with M-NCPPC staff, requesting that Derrick take a closer look at the issues and violations. Derrick advised that, from his legal perspective, "the case could be effectively argued either way." He also advised that a formal "violation hearing" would have to be held to resolve the determination. He agreed to further review the information we presented and determine if it warranted such a hearing.</p> <p>Derrick requested that the Committee prepare its written response to the December 30, 2004 letter received from Rose Krasnow and submit it to him, along with other commentary and formal request for a violation hearing.</p> <p>(Agenda and Documentation table attached.)</p>	<p>Excerpts from Agenda:</p> <ul style="list-style-type: none"> III. Height Violation Discussion - Master Plan - Project Plan - Montgomery County Codes - Preliminary Plan - Site Plan - Site Plan Enforcement Agreement <p>Excerpt from Documentation table:</p> <p>"The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn's Staff OpenSpace Plan Review. In submitting a new data table, Wynn has independently overridden... the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires."</p> <p>"The Developer and its legal counsel were aware of the conditions for development of RM02 under the "Optional Method" of development... 50-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan."</p>
January 11, 2005	Email to Derrick Barlage, John Carter, and Sue Edwards	Email to Derrick Barlage, John Carter, and Sue Edwards from Amy Presley following up on the January 10, 2005 meeting.	(Email attached.)

October 25, 2005

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Manor Home Amendments

January 26, 2005	Email/Letters to Chairman Derrick Barlage (continued)	<p>Derrick requested that the Committee prepare its written response to the December 30, 2004 letter received from Rose Krasnow and submit it to him, along with other commentary and formal request for a violation hearing.</p> <p>(Email and Letters attached.)</p>	<p>Excerpts from Letter (continued):</p> <p>"We respectfully request a full Board hearing on this issue."</p> <p>"We would like the Board to consider the letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 50-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse."</p> <p>"In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10" will be greatly appreciated."</p> <p>Note regarding Rose Krasnow Letter with Embedded Comments:</p> <p>As of this time, the Committee had not received or located the unaltered site plans for the buildings in question, nor did it understand the significance of the Signature Site Plan and its date table. The Signature Site Plan set was not provided to the committee (although requests for complete site plan documentation were made of Wynn Withers and then Michael Ma on several occasions prior) until days before the April 14, 2004 Height Threshold Hearing. Even then, the documents were only reviewed through the personal assistance of Rose Krasnow. The Committee, at time of preparation of the response to the December 30, 2004 letter from Rose, could only argue based on a requirement for Site Plans to conform to Project Plan requirements, and that "4 stories" would have to be interpreted by the definition of "4 stories" as contained within the Project Plan Data Summary.</p>
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Manor Home Amendments

- January, 2005 – Height Threshold Violation Hearing scheduled for March 17, 2005
- February 1, 2005 – Meeting with CPJ and Bozzuto to review “proposed” Manor Home changes
- February 10, 2005 – Manor Home Hearing
 - Staff Report – Developer Proposal:
 - “The proposal will enlarge the footprint and unit count of five multi-family buildings within phase one and two. The units were originally approved as 9-unit, three-story buildings...The amendment is to create two 11-unit buildings and three 12-unit buildings, all three stories.”

October 25, 2005

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Manor Home Amendments

- What were they trying to accomplish?
- Could it be that there was another agenda?

October 25, 2005

Prepared by CTCAC

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CPI

CLARKSBURG TOWN CENTER
JANUARY 1997
MAY 1997

NY 92-M161C, 99-02014

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